

**JUN 09 2006**Vardanyan v. Gonzales, No. 04-71605

KLEINFELD, Circuit Judge, dissenting:

**CATHY A. CATTERSON, CLERK**  
U.S. COURT OF APPEALS

I respectfully dissent.

The question is whether there was substantial evidence on the record as a whole that supported the immigration judge's adverse credibility determination. I think there was. I agree with the immigration judge that it does not make much sense that an object of the government's ire, such as Mr. Vardanyan claims to be, would serve out his full term in the military, be discharged, be allowed to leave the hospital without difficulty, and be allowed to travel abroad for a wrestling competition without difficulty. This goes to the heart of Vardanyan's claim.

I also agree with the immigration judge that Vardanyan's explanation of his lack of contact with his mother does not make any sense. He stayed in constant contact with her while he was in the military. Yet, as the immigration judge noted, has had no contact with her for four years, including 2 1/2 years while he was in the United States, and there was nothing to interfere or create a threat of harm to either one of them on account of contact. When he was asked about this, first he said that the reason he had not talked with his mother in Russia is that he did not

know where she was. Then, he said it was hard to communicate with her because she was in a village, a fact he would not know if he did not know where she was. Then he said that he was not in contact with her because she would have to come from the village into a city to talk on a phone. When confronted with the fact that his father in Armenia was in contact by phone with his mother in Russia, meaning it must be possible for her to talk on the phone, he said that the reason his mother could not get in touch with him was that when ever she called he was at work. This answer conflicted with his previous answers, because it showed that his mother did have access to a telephone and had tried to call him. Then, when the immigration judge asked him why he had not been able to arrange a time to be home when his mother telephoned, he said, "I didn't really have time to do that."

There may be a perfectly good reason for changing stories. Perhaps there was some domestic dispute that Vardanyan did not feel was any of the immigration judge's business. But the immigration judge could also conclude quite reasonably, and apparently did, that Vardanyan just made up stories as he went along. Although Vardanyan's lack of communication with his mother does not go to the heart of his claim, it does go to the heart of his credibility.

There was also a substantial basis for the immigration judge's conclusion

that Vardanyan had not supported his claim about his mother's provocative politics. His mother was a journalist who had published articles for women's rights group, yet Vardanyan claimed that he could not obtain any copies of any of the articles. Because the whole purpose of the articles was evidently to tell the public about women's rights, it does not make any sense that they would be kept secret and copies would not be provided to Vardanyan in the United States. We have authority that says failure to obtain corroborating evidence where there is no good reason to explain its unavailability justifies an adverse credibility determination.<sup>1</sup> There could be an honest explanation for this, but that is not determinative and no plausible explanation was offered. What is determinative is that this failure to provide documentation, where it should have been practical to do so, does provide a substantial basis for the adverse credibility determination. And the issue of his mother's politics does go to the heart of the claim.

An immigration judge's adverse credibility determination can only be reversed "if the evidence compels a contrary conclusion."<sup>2</sup> Here that exacting standard has clearly not been met. I therefore respectfully dissent.

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<sup>1</sup> Chebchoub v. INS, 257 F.3d 1038, 1044 (9th Cir. 2001).

<sup>2</sup> Singh v. Gonzales, 439 F.3d 1100, 1105 (9th Cir. 2006).